IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.4131 of 2002

GHULAM HASNAIN aged 61 years, son of late Md.Salaudin, resident of mohalla Jitwarpur Chowk, P.S. Samastipur,Dist. Samastipur----------petitioner

Versus

1.THE STATE OF BIHAR through the Secretary, Water Resources Department, Sinchai Bhawan, Patna
2.The Chief Engineer, Water Resources Department, Jagannath High School, Dhurwa, Ranchi
3.The Superintending Engineer, Waterways Circle, Gumla
4.The Executive Engineer, Waterways Division, Gumla
----------respondents

For the petitioner :M/S Vishwanth Ram, Ajay Kumar
For the State of Jharkhand:Mr.Satyendra Dutta Mishra
For the State respondents:Mr.S.B.Kumar, SC 16

---

7. 28.11.2008 Heard learned counsel for the petitioner, learned counsel for the State of Jharkhand and learned counsel for the State of Bihar.

Petitioner has prayed for a direction to the Executive Engineer, Waterways Division, Gumla, to release the amount of Rs. 57,519/- in his favour which was deducted from the death-cum-retirement gratuity of the petitioner on the ground that excess payment had been made to the petitioner during the course of service. That order is only an intimation by the Executive Engineer, Waterways Division, Gumla to the Accountant General, Bihar, Patna, which is contained in Annexure-1. It gives no reasons and details how and why such amount has been found to be excess payment to the petitioner.

WEB COPY NOT OFFICIAL

The petitioner has filed the writ petition under an apprehension that his first and second time bound promotions granted w.e.f. 1.4.1981 and 1.4.1985 by order of the Superintending Engineer dated 6.7.1991 (Annexure-2) have probably been treated as illegal and, therefore, some excess payment is sought to be recovered. However, the position has been made clear by Annexure-C annexed with the counter affidavit filed on behalf of officials of the State of Jharkhand, which came to be created w.e.f. 15.11.2000. Annexure-A is a policy decision and circular of the State of Bihar dated 27.3.1987 which permits time bound promotion to an employee by counting the service in work charge establishment. Annexure-B is a letter from the Divisional Secretary of Water Resources Department, Govt. of Bihar, dated 11.5.2002 seeking instruction in respect of this very writ petition from the Chief Engineer, Water Resources Department, Ranchi, Jharkhand. Annexure-C is a letter issued by the Chief Engineer, Water Resources Department, Ranchi, dated 28.8.2002 sent to the Accountant General at Patna as well as at Ranchi. That letter shows that petitioner's promotions were

WEB COPY NOT OFFICIAL

wrong and his time bound promotions have not been found illegal. In that letter, the stand of the Chief Engineer is that before 1977 when the petitioner was in work charge establishment, he was given certain promotions on the post of Fitter Grade II and Fitter Grade I and those have been found illegal and are being cancelled and on that account if any excess payment is detected, the same shall be realized from the petitioner.

In the opinion of this Court, Annexure-C is part justification for the excess amount shown recoverable from the petitioner in Annexure-1 dated 24.8.1999 although that order is not speaking order and contains no reason.

WEB COPY NOT OFFICIAL

The facts are not in dispute. The petitioner was appointed as a Plumber in work charge establishment in Kosi Project of Water Resources Department on 1.3.1959, then as a Khalasi on 1.6.1959, then as a Helper on 1.11.1959, as Assistant Fitter Grade 2 on 1.10.1962 and thereafter as Assistant Fitter Grade 1 in the same very work charge establishment. He was made permanent w.e.f. 1.4.1977 in pursuance of Govt. order dated 20.8.1981. He was transferred to Waterways Division, Gumla, on 24.12.1985 and was

granted first time bound promotion by order dated 6.7.1991 w.e.f. 1.4.1981 and 1.4.1985 respectively. He superannuated from service on 30.11.1998.

Since the service of the petitioner was throughout under the undivided State of Bihar hence the order of recovery from the petitioner will only benefit the State of Bihar and if any payment is required to be made to the petitioner on account of this order, the same will also have to be made by the State of Bihar. Learned counsel for the State of Jharkhand has rightly submitted that except taking a decision on the basis of facts available in the records, the concerned authority of the Jharkhand State has nothing more to say in the matter.

WEB COPY NOT OFFICIAL

In the facts of the case, this Court finds that petitioner's case has to be allowed on the basis of law settled by this Court in the case of Ram Lakshan Sharma vs. State of Bihar & ors., reported in 2006(3) PLJR 21. In similar circumstances, the so-called promotion of petitioner of that case on various posts in work charge establishment was treated by this Court to be assignment on higher post and not a case of

promotion and on account of transactions being very old, like in the present case, the respondents were held not entitled to make any recovery. Following the aforesaid judgment in this case also it is held that the various assignments of the petitioner to work on higher posts in work charge establishment made at a time when the policy decision contained in Annexure-A was not in force will not to be treated as promotion and for those so-called promotions being held illegal no recovery will be made from the petitioner.

WEB COPY NOT OFFICIAL

If any recovery has already been made from the petitioner then the amount so recovered shall be paid back to the petitioner by the concerned respondents and authorities of the State of Bihar within three months from today. If petitioner is found entitled for any other consequential benefits the same shall also be made available to him without any delay.

The writ petition is allowed to the aforesaid extent.

(Shiva Kirti Singh,J.)

spal/

WEB COPY
NOT OFFICIAL